APPEAL NO. 49951-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

RONALD W. ERICKSON, Appellant,

v.

PORT OF PORT ANGELES, CITY OF PORT ANGELES, CLALLAM COUNTY, and NIPPON PAPER INDUSTRIES, USA, and PUGET SOUND MILLS & TIMBER CO. STOCKHOLDERS,
Respondents

RESPONSE TO APPELLANT'S OPENING BRIEF

FIDELITY NATIONAL LAW GROUP	PLATT IRWIN LAW FIRM
Janis G. White, WSBA #29158 Of Attorneys for Respondent Nippon Paper Industries, USA	Simon Barnhart, WSBA#34207 Of Attorneys for Respondent Port of Port Angeles
701 5th Ave., Ste. 2710 Seattle, WA 98104-7054 206/223-4525	403 South Peabody St. Port Angeles, WA 98362 Phone: 360/457-3327

RESPONSE TO APPELLANT'S OPENING BRIEF

TABLE OF CONTENTS

Section		**Page**
Table of Authorities		ii
I.	Restatement of Issues	1
II.	Statement of the Case	1
	1. Background Facts	1
	2. Procedural History	4
III.	Argument	16
	1. Did the Superior Court err in declining to appoint counsel for appellant Ronald W. Erickson?	16
	2. Did the Superior Court err in ordering a stay of the proceedings pending the report of the litigation guardian?	19
	3. Did the Superior Court err in ordering the dismissal of certain of Mr. Erickson's claims in accordance with the recommendations of the litigation guardian?	21
	4. Did the Superior Court err in ordering Mr. Erickson to file a more definite statement of his claims against the Port and NPIUSA?	23
	5. Did the Superior Court err in granting summary judgment in favor of the Port and NPIUSA?	26
	6. Did the Superior Court err in denying Mr. Erickson's motion for reconsideration of its order granting summary judgment in favor of the Port and NPIUSA?	36
	7. Should the Court of Appeals award attorney fees and expenses to the Port and NPIUSA?	37
IV.	Conclusion	38

TABLE OF AUTHORITIES

Authority	**Page**
Cases	
Atherton Condominium Apartment-Owners Assoc. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990)	27
Bassett v. City of Spokane, 98 Wn. 654, 656, 168 P. 478 (1917)	32
Berry v. Pond, 33 Wn.2d 560, 565, 206 P.2d 506 (1949)	32
Bringle v. Lloyd, 13 Wn.App. 844, 848, 537 P.2d 1060 (1975)	36
Burmeister v. State Farm Insurance Co., 92 Wn.App. 359, 365, 966 P.2d 921 (1998)	27
Carlson v. Stair, 3 Wn.App. 27, 30, 472 P.2d 598 (1970)	31
Dave Johnson, Inc. v. Wright, 167 Wn.App. 758, 787, 275 P.3d 339, *rev. denied*, 175 Wn.2d 1008 (2012)	38
DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)	19, 36
Erickson v. Washington State Department of Natural Resources, 127 Wn.App. 1024, 2005 WL 1101561 (2005) (unpublished opinion), *rev. denied*, 156 Wn.2d 1021, 132 P.3d 735 (2006)	4
In re Dependency of MSR, 174 Wn.2d 1, 20-21, 271 P.3d 234 (2012)	22-23
In re Estate of Muller, 197 Wn.App. 477, 490, 389 P.3d 604 (2016)	38
In re Estate of Peterson, 102 Wn.App. 456, 462, 9 P.3d 845 (2000), *review denied*, 142 Wn.2d 1021 (2001)	18, 19, 25
Kennedy v. Sea-Land Service, Inc., 62 Wn.App. 839, 855-56, 816 P.2d 75 (1991)	26
King v. Olympic Pipeline Co., 104 Wn.App. 338, 350, 16 P.3d 45 (2000)	19
Landis v. N. Am. Co., 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936)	19
LaPlante v. State, 85 Wn.2d 154, 158, 531 P.2d 299 (1975)	27
Pentagram Corp. v. City of Seattle, 28 Wn.App. 219, 223, 622 P.2d 892 (1981	29
Rushton v. Borden, 29 Wn.2d 831, 839, 190 P.2d 101 (1948)	32
Seattle & W.W.R. Co. v. Ah Kowe, 2 Wash.Terr. 36, 40, 3 P. 188 (1880)	25
State v. Gonzales-Morales, 138 Wn.2d 374, 381, 979 P.2d 826 (1999)	18
State v. Knowles, 79 Wn.2d 835, 841, 490 P.2d 113 (1971)	25

Authority	**Page**
Cases cont'd	
State v. Music, 79 Wn.2d 699, 716, 489 P.2d 159 (1971)	19
State v. Trevino, 10 Wn.App. 89, 94-95, 516 P.2d 779 (1974)	18
Teel v. Stading, 155 Wn.App. 390, 393–94, 228 P.3d 1293 (2010)	28
West v. Thurston County, 169 Wn.App. 862, 867-68, 282 P.3d 1150 (2012), *rev. denied*, 176 Wn.2d 1012 (2013)	38
Westberry v. Interstate Distributor Co., 164 Wn.App. 196, 204, 263 P.3d 1251 (2011)	26
Zobrist v. Culp, 18 Wn.App. 622, 636, 570 P.2d 147 (1977)	27
Statutes	
RCW 4.84.185	37
RCW 4.84.250	37
RCW 4.84.290	37
RCW 7.28.010	28
Rules of Appellate Procedure	
RAP 2.3(b)	13
RAP 18.1(a)	37
RAP 18.9(a)	37
Civil Rules	
CR 8(a)	10, 24
CR 11	10
CR 12(e)	10, 23, 34, 35
CR 56	10
CR 59	11
General Rules	
GR 33	5, 8, 12, 15, 17, 19
GR 33(a)	17
GR 33(b)(1)	17
GR 33(c)(1)(C)	18

I. RESTATEMENT OF ISSUES

1. Did the Superior Court err in declining to appoint counsel for appellant Ronald W. Erickson?
2. Did the Superior Court err in ordering a stay of the proceedings pending the disposition of the report of the litigation guardian?
3. Did the Superior Court err in ordering the dismissal of certain of Mr. Erickson's claims in accordance with the recommendations of the litigation guardian?
4. Did the Superior Court err in ordering Mr. Erickson to file a more definite statement of his claims against the Port and NPIUSA?
5. Did the Superior Court err in granting summary judgment in favor of the Port and NPIUSA?
6. Did the Superior Court err in denying Mr. Erickson's motion for reconsideration of its order granting summary judgment in favor of the Port and NPIUSA?
7. Should the Court of Appeals award attorney fees and costs to the Port and NPIUSA?

II. STATEMENT OF THE CASE

1. Background Facts

Mr. Erickson owns a small triangular parcel of real property located in Port Angeles, Washington, with legs of 13 feet, 23 feet and 32 feet and

an area of approximately 140 square feet (the "Property"). Clerk's Papers ("CP") 244, 365-66, 675-76. The Property is in an industrial area near the Port Angeles waterfront and is in proximity to real property titled in the Port of Port Angeles (the "Port"), the City of Port Angeles (the "City"), and Nippon Paper Industries USA ("NPIUSA").[1] CP 244, 285, 311, 326.

In 1997, Mr. Erickson acquired the Property for a nominal price through a tax foreclosure sale conducted by Clallam County (the "County"). CP 38, 48, 207, 365, 675; Verbatim Report of Proceedings ("VRP") (6/15/2016) at 56; VRP (9/23/2016) at 48, 51-52. The Property is legally described as follows:

> Beginning at the intersection of the Northerly line of Third Street[2] North and the Easterly Line of "K" Street,[3] in said City of Port Angeles and running thence Northerly along the Easterly line of said "K" Street a distance of 13.00 feet; thence Southerly along a straight line to a point in the Northerly line of said Third Street North distant 23.00 feet Easterly measured along said Northerly line, from the Easterly line of said "K" Street; thence Westerly along the Northerly line of said Third Street North a distance of 23.00 feet to the Point of Beginning.

CP 366, 676.

---

[1] During the pendency of these proceedings, NPIUSA sold its land holdings to the McKinley Paper Co. For ease of reference, this Response Brief will reference NPIUSA only.

[2] Third Street is presently known as Marine Drive.

[3] As discussed *infra*, the portion of "K" Street mentioned in this legal description was vacated by the City.

In 1913, the City received a deed to construct a highway, which would become known as Marine Drive. VRP (6/15/2016) at 36-37, 56. The City has maintained and operated Marine Drive as a major thoroughfare for several decades. VRP (6/15/2016) at 37, 56; VRP (9/23/2016) at 41.

In 1989, eight years before Mr. Erickson acquired the Property, the City eliminated its interest in "K" Street via City Ordinance No. 2527, and thereafter executed and delivered quit claim deeds of the same to the Port and NPIUSA as to their respective halves of the vacated street. CP 48, 367-70, 591-92, 792-93; VRP (6/15/2016) at 34-35, 53, 55, 59; VRP (9/23/2016) at 52.

The gravamen of Mr. Erickson's claims appears to be that he is entitled either to enlarge his small Property to include approximately 2.5 acres based upon a theory of reversionary rights dating back 100 years, or to receive compensation from the named defendants. CP 38, 207; VRP (7/24/2015) at 7, 47; VRP (9/23/2016) at 48-49.

Mr. Erickson claims a mental disability that purportedly causes him to have difficulty coping with stress and emotions; suffer from periods of hyperactivity, impulsivity, anxiety, or obsessiveness; and struggle to maintain concentration, stamina, or memory. CP 39, 49, 208, 393-400. In addition, sunlight in courtrooms may occasionally cause "optical

migraines." CP 39-40, 208-09. Moreover, Mr. Erickson does not have a legal education or background. CP 39, 208.

Despite the challenges Mr. Erickson has identified, he has undertaken prior litigation against government entities with respect to certain speculative land claims, taking one case to the Court of Appeals and seeking review in the Washington Supreme Court.[4] CP 39, 208. Additionally, in the course of this litigation, Mr. Erickson has demonstrated that he is able to perform legal research, follow applicable court rules, understand the nature of scheduled proceedings, conduct himself appropriately in the various proceedings, and respond to opposing counsel's arguments. CP 39, 208. Finally, Mr. Erickson appears to be of above-average intelligence and his ability to proceed without legal counsel is not inferior to other *pro se* litigants. CP 39, 208.

2. Procedural History

Mr. Erickson filed his Second Amended Complaint (the "Complaint") on June 1, 2015, against eleven defendants consisting of three local governmental entities, two state agencies, one federal agency, four private businesses or their shareholders, and one individual. CP 1073. The

[4] *See Erickson v. Washington State Department of Natural Resources*, 127 Wn.App. 1024, 2005 WL 1101561 (2005) (unpublished opinion), *rev. denied*, 156 Wn.2d 1021, 132 P.3d 735 (2006).

Complaint exceeds 60 pages and contains multiple causes of action variously fashioned as Property Line Designation, Quiet Title, Trespass, Injunctive Relief, Declaratory Reliefs (comprised of 17 specific claims), Frauds (comprised of three specific claims), and Damages. CP 1073-1135. The claims alleged against the Port and NPIUSA are summarized in the following table:[5]

The Port	Property Line Designation, Quiet Title, Quiet Title to Water and Hydro Production Rights, Attorneys' Fees and Costs, Injunctive Relief, Declaratory Relief, Fraud and Damages. CP 974-75.
NPIUSA[6]	Property Line Designation, Quiet Title, Utility Trespass, Injunctive Relief, Declaratory Relief, Fraud and Damages. CP 977-78.

Despite certain sensational accusations (*e.g.* fraud, discrimination, and damages), Mr. Erickson is primarily concerned with claims concerning title, boundaries, and general respect for his property rights. CP 396-99, 801-02, 905-06.

On May 26, 2015, Mr. Erickson filed a request for accommodation with the Superior Court under General Rule ("GR") 33. CP 49, 393-99, 1056. Mr. Erickson asked the Superior Court to appoint, at public expense,

[5] For sake of clarity, this Response Brief does not identify the other defendants and the causes of action that Mr. Erickson alleged against the same.

[6] Despite the sensational allegations contained in the Complaint, Mr. Erickson informed the Superior Court that his concerns involving NPIUSA were only "minor." CP 393, 395.

a "competent trial attorney" to advance his lawsuit and "competent arbitrators" to deal with other minor concerns. CP 49, 393. If the Superior Court concluded an attorney or arbitrator was not necessary, Mr. Erickson asked that a "next friend" be provided to assist him in the courtroom, *i.e.*, speak on his behalf, enter into negotiations with the parties, prepare court filings, etc. CP 49, 393-94.

On June 24, 2015, the Superior Court granted Mr. Erickson's request in the "alternative."[7] CP 19, 49, 447, 565, 795-96, 888. Instead of appointing legal counsel, an arbitrator, or a next-friend, the Superior Court appointed a litigation guardian "to review the pleadings in this matter and conduct all research necessary to make a determination whether any of Mr. Erickson's claims have merit and/or whether it is in his best interest to proceed with the lawsuit." CP 19, 49, 447, 565, 796, 888. Mr. Erickson did not timely contest the alternative relief expressly ordered.

On July 24, 2015, the Superior Court stayed the proceedings and prohibited the parties from filing any additional materials without prior court authorization. CP 20-21, 990-91. The purpose of the stay was to provide the Superior Court the time necessary to locate a litigation guardian, and to provide that litigation guardian sufficient time to research Mr.

[7] The Superior Court also expressed concern whether Mr. Erickson had the capacity to file a lawsuit. CP 795.

Erickson's claims and make a determination as to which claims, if any, had merit. CP 20-21, 990-91, 1057; VRP (7/24/2015) at 6-8, 10.

On July 29, 2015, the Superior Court identified an attorney who was willing to serve as the litigation guardian. CP 50, 988-89. On August 25, 2015, in response to certain questions from the litigation guardian, the Superior Court clarified that he was to perform sufficient research to determine which of Mr. Erickson's claims had merit, but that his services would not include participating in any trial or conducting discovery. CP 50, 986. Mr. Erickson received the correspondence that clarified the litigation guardian's role. CP 50, 986. Again, Mr. Erickson did not contest or otherwise challenge the defined scope of service.

On October 23, 2015, the litigation guardian filed his amended report. CP 981. The litigation guardian determined that the claims against all but five of the named defendants were devoid of any legal merit and should be dismissed. CP 983.

However, the litigation guardian did recommend that the Superior Court address Mr. Erickson's claims "to a reversionary right to property and the extension of the boundary lines of [his] property." CP 51, 801, 984-85. The litigation guardian concluded "[t]here seem to be no disputed facts in the case and the [final] determination could be made on a summary judgment motion if made by any of the remaining parties." CP 51, 801, 984.

The remaining parties identified by the litigation guardian were the Port, NPIUSA, the City, the County, and Puget Sound Mills and Timber Company stockholders.[8] CP 984.

After the litigation guardian filed his amended report, Mr. Erickson stipulated to the dismissal of the majority of the defendants. CP 973. After these dismissals were entered, only four defendants against whom service of process had been perfected remained in the litigation: the Port, NPIUSA, the City, and the County.

On March 25, 2016, the remaining defendants filed a motion to lift the stay and dismiss all claims that the litigation guardian identified as being devoid of legal merit. CP 972-80. Mr. Erickson filed material in opposition to the request. CP 889-971.

On April 15, 2016, Mr. Erickson filed a letter with the Superior Court, asking whether someone would be available at the upcoming hearing to answer his questions regarding courtroom procedure. CP 51, CP 887. Mr. Erickson included a copy of the Superior Court's GR 33 order, complaining that the signing judge had intended to appoint a litigation guardian to advance his private lawsuit, but the litigation guardian had instead advanced the interests of the court. CP 51-52, 887. Additionally, Mr. Erickson

[8] Service of process was never perfected as to Puget Sound Mills and Timber Company stockholders, and no appearance has been made by them or on their behalf.

claimed that, without assistance of legal counsel, he doubted he would be able to understand and argue the applicable law. CP 52, 887. In this same communication, Mr. Erickson conceded the facts did not support his claim to any reversionary interest in Marine Drive. CP 790, 887.

On April 22, 2016, following a hearing on the defendants' motion, the Superior Court granted the relief recommended by the litigation guardian[9] and requested by the defendants, and limited Mr. Erickson's claims to those causes of action that were necessary to (1) quiet title, (2) designate property lines, and (3) collect reasonable attorney fees. CP 27-29, 52, 444-46, 869-71; VRP (4/22/2016) at 19-21. Mr. Erickson made additional concessions that he was not interested in any claims involving reversionary interests in Marine Drive, the City's vacation of "K" Street, and trespass claims involving NPIUSA. VRP (4/22/2016) at 13; VRP (9/23/2016) at 36-37.

In direct response to Mr. Erickson's April 15, 2016 letter, the Superior Court denied Mr. Erickson's request for legal counsel, reasoning that he was not entitled to an attorney at public expense because the case involved a civil matter, not a criminal matter. CP 53; VRP (4/22/2016) at 10. However, the Superior Court noted there were avenues available to Mr.

[9] The litigation guardian summarized his recommendation at VRP (4/22/2016) at 8-11.

Erickson, *i.e.*, nonprofit organizations that provide legal services to indigent people. CP 53; VRP (4/22/2016) at 10.

On May 11, 2016, pursuant to Civil Rule ("CR") 8(a) and 12(e), the Port and NPIUSA filed a motion for a more definite statement with respect to Mr. Erickson's property line designation and quiet title claims against those two parties. CP 862-66. Specifically, the Port and NPIUSA requested that Mr. Erickson identify the specific titled properties at issue, the specific property lines that needed to be adjusted, the scope and extent of any such adjustment, and the legal basis supporting each claim. CP 865; VRP (5/20/2016) at 24-25. Mr. Erickson filed material in opposition to the request. CP 653-657, 661-781.

On May 17, 2016, pursuant to CR 11 and 56, the City moved for summary judgment and requested its reasonable attorneys' fees. CP 55, 536-45, 842-54. The City highlighted that (1) it had relinquished any/all interest in "K" Street, (2) it was operating/maintaining Marine Drive as a highway in accordance with applicable deeds and laws, (3) Mr. Erickson had conceded he had no interest in Marine Drive, (4) Mr. Erickson is a stranger to any/all deeds upon which he attempts to claim a reversionary interest in property, and (5) any reversionary rights to the properties at issue have long since been abandoned. CP 538-39, 541, 543-44, 848-49; VRP (6/15/2016) at 34-37. Additionally, the City argued it was entitled to

reasonable attorneys' fees of $1,500, as the claims alleged were frivolous and Mr. Erickson appeared to be keeping the municipality in the lawsuit for an improper purpose. CP 544, 850-53; VRP (6/15/2016) at 38-39. Mr. Erickson opposed the motion. CP 461-77, 581-645.

On May 20, 2016, the Superior Court granted the Port's and NPIUSA's motion for a more definite statement, reasoning Mr. Erickson's Complaint was so voluminous and confusing that it was unintelligible and a more definite statement would help (1) the two parties frame a responsive pleading, and (2) resolve the case in an efficient and economical manner. CP 30-32, 658-60; VRP (5/20/2016) at 31-32.

On May 24, 2016, Mr. Erickson filed a notice of appeal of the Superior Court's order of April 26, 2016, dismissing claims and lifting the stay. CP 54.

On June 2, 2016, Mr. Erickson filed a motion to amend the Superior Court's order that he file a more definite statement. CP 568-80. However, in substance this filing was a challenge of the Superior Court's April 26, 2016 order dismissing the majority of the claims set forth in his Complaint, and a request that he be allowed to amend his Complaint to add additional claims. CP 568-80. The Port and NPIUSA objected to the request, arguing that the motion was untimely and the proposed amendments that were previously rejected by the court, failed to meet the requirements under CR

59, or were moot. CP 420-25. Additionally, the Port and NPIUSA characterized the motion as an attempt at a collateral attack of previous orders. VRP (7/1/2016) at 18, 21. The Superior Court agreed with the Port and NPIUSA and denied the motion to amend. CP 401-02, 405-06; VRP (7/1/2016) at 23.

By letter to the Clallam County Superior Court Administrator dated June 8, 2016, Mr. Erickson requested information as to how he could file a grievance with respect to the appointment of his litigation guardian. CP 54, 391. Mr. Erickson subsequently submitted a grievance, explaining his belief that the Superior Court's GR 33 order of June 24, 2015 granted him assistance throughout the proceeding. CP 439. Again, Mr. Erickson requested that the Superior Court appoint counsel to advocate on his behalf. CP 58, 439.

On June 13, 2016, Mr. Erickson filed his attempt at a more definite statement, as ordered by the Superior Court on May 20, 2016. CP 482-535. However, rather than provide greater specificity as to his claims against the Port and NPIUSA as directed by the court, Mr. Erickson rehashed earlier arguments and reserved historical documents. CP 482-535.

On June 15, 2016, the Superior Court granted the City's motion for summary judgment and attorney fees. CP 33-37. The Superior Court found that the City no longer had an interest in "K" Street; Mr. Erickson

previously conceded he did not have an interest in Marine Drive, which was being maintained by the City as a highway in accordance with the applicable deed; and Mr. Erickson's claims are based on deeds to which he is a stranger and reversionary interests that have long since been waived. CP 37, 55, 460; VRP (6/15/2016) at 55-56. The Superior Court also found that the City was entitled to its reasonable attorneys' fees for the time needed to bring the motion because Mr. Erickson's claims were not supported by facts/law and constituted an abuse of process. CP 36, 55-56, 459; VRP (6/15/2016) at 56-58.

On June 29, 2016, Mr. Erickson filed a notice for discretionary review, challenging the Superior Court's award of summary judgment and attorneys' fees to the City. CP 60. The Court of Appeals consolidated Mr. Erickson's earlier interlocutory appeal with his request for discretionary review (CP 47-69), and held that Mr. Erickson failed to demonstrate that review was appropriate under RAP 2.3(b). CP 69.

In its Ruling Denying Review, the Court of Appeals noted that Mr. Erickson's appeal concerning the April 24, 2015 Superior Court order appointing a litigation guardian was untimely. CP 62-63. "This court will not review that appointment or the scope of the appointment as set out in the appointment order or the July and August 2015 letters." CP 62. The Court explained that (1) Mr. Erickson had not made a formal request for

accommodation since 2015, despite knowing the appropriate procedure; (2) Mr. Erickson had failed to demonstrate that the Superior Court had abused its discretion in limiting the scope of its relief; (3) Mr. Erickson's understanding of the scope of the order was expressly contradicted by the order's language; and (4) the litigation guardian discharged his role as ordered by the Superior Court. CP 62-64, 67. Importantly, the Court noted Mr. Erickson failed to demonstrate the Superior Court committed obvious or probable error in dismissing the majority of his claims pursuant to the litigation guardian's recommendation. CP 64.

With respect to the City's motion for summary judgment, the Court of Appeals stated that the Superior Court properly dismissed the quiet title action as a matter of law and that its award of attorneys' fees was proper. CP 67-68.

On August 12, 2016, the Port and NPIUSA filed a motion for summary judgment. CP 213-17, 363-82. Both defendants disavowed any interest in the triangular parcel that Mr. Erickson acquired via the tax foreclosure sale, and in Marine Drive. CP 214-15, 375-76, 380; VRP (9/23/2016) at 28, 43, 49. Additionally, to the extent the issue was not foreclosed following the Superior Court's award of summary judgment to the City concerning Marine Drive, the two defendants argued Mr. Erickson's tax title deed extinguished and did not convey any reversionary

interests in surrounding properties. CP 376-79; VRP (9/23/2016) at 28, 49. Finally, the defendants argued that Mr. Erickson did not have standing to challenge an error, real or perceived, in a boundary survey. CP 215, 375, 377; VRP (9/23/2016) at 26-28, 30. Mr. Erickson filed opposition material in response to the motion for summary judgment. CP 220-359.

On August 19, 2016, Mr. Erickson filed a second request for accommodation under GR 33. CP 38, 207. The Superior Court denied the request, reasoning (1) Mr. Erickson has the ability to understand the proceedings with which he is involved, and does not meet the GR 33 requirements for relief; (2) a previous judge had already provided the necessary accommodation, which helped to focus the necessary legal review; and (3) appointment of counsel would result in undue financial burden on the County. CP 39, 208, 211. While the Court recognized Mr. Erickson's complaints concerning his mental disability and discomfort in handling his own case, the Court noted that his disability did not compromise his ability to argue the merits of his case. CP 39, 208.

Nonetheless, the Superior Court was willing to provide Mr. Erickson with the following reasonable accommodations: additional time to prepare for a motion or hearing, additional time to make responsive arguments, require parties to restate more clearly their arguments and positions, hold any hearings in Clallam County Superior Court (or close

blinds in Jefferson County Superior Court where sunlight might be distracting), and afford other reasonable relief. CP 40, 209.

On September 23, 2016, the Superior Court granted summary judgment in favor of the Port and NPIUSA. CP 41-43, 99-101, 193-95; VRP (9/23/2016) at 51-54. The court noted there may be some dispute in some of the facts, but none of the disputed facts were material to the case. VRP (9/23/2016) at 53. Additionally, the court noted Mr. Erickson had not provided any legal authority to support his claim to override his neighbors' property interests. VRP (9/23/2016) at 53-54. Thus, the Superior Court adopted the arguments as set forth by the Port and NPIUSA in their briefing. CP 41, 100; VRP (9/23/2016) at 51.

On October 3, 2016, Mr. Erickson filed a motion and supporting affidavit for reconsideration of the Superior Court's award of summary judgment to the Port and NPIUSA. CP 96-191. On October 28, 2016, the Superior Court denied the request. CP 95. Mr. Erickson appeals.

III. ARGUMENT

1. Did the Superior Court err in declining to appoint counsel for appellant Ronald W. Erickson?

On two separate occasions the Superior Court ordered accommodations in response to requests by Mr. Erickson, but in neither case

did the court order the appointment of legal counsel for him as he requested. CP 447, 207.

GR 33 defines "accommodation" as follows:

> (a)(1) "Accommodation" means measures to make each court service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability, and may include but is not limited to:
>
> (A) making reasonable modifications in policies, practices, and procedures;
>
> (B) furnishing, at no charge, auxiliary aids and services, including but not limited to equipment, devices, materials in alternative formats, qualified interpreters, or readers; and
>
> (C) as to otherwise unrepresented parties to the proceedings, **representation by counsel, as appropriate or necessary to making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by a person with a disability**.

GR 33(a) (emphasis added).

GR 33 further provides that requests "for aids, modifications and services will be addressed promptly and in accordance with the ADA and the Washington State Law Against Discrimination, **with the objective of ensuring equal access to courts, court programs, and court proceedings**." GR 33(b)(1) (emphasis added).

By its terms, GR 33 does not contemplate appointment of counsel to represent a civil litigant for any purpose other than to ensure that an

unrepresented person with a disability has access to and use of each court service, program or activity.

Decisions about any needed accommodations are left to the discretion of the trial court. *State v. Gonzales-Morales*, 138 Wn.2d 374, 381, 979 P.2d 826 (1999) (citing *State v. Trevino*, 10 Wn.App. 89, 94-95, 516 P.2d 779 (1974)) ("the appointment of an interpreter is a matter within the discretion of the trial court 'to be disturbed only upon a showing of abuse'"). Abuse of discretion occurs when the trial court's decision rests on untenable grounds or untenable reasons. *In re Estate of Peterson*, 102 Wn.App. 456, 462, 9 P.3d 845 (2000), *review denied*, 142 Wn.2d 1021 (2001).

Mr. Erickson provides no citation to competent authority in the state of Washington for the proposition that a trial court is required to appoint legal counsel to represent a *pro se* plaintiff in a civil matter. Rather, under GR 33, in determining whether to grant an accommodation and what accommodation to grant, the trial court shall "make its decision on an individual and case-specific basis with due regard to the nature of the applicant's disability and the feasibility of the requested accommodation." GR 33(c)(1)(C). Assignments of error that are not supported by citations to authority will not be reviewed on appeal. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

Mr. Erickson has failed to demonstrate error in the trial court's refusal to provide him with court-appointed legal counsel in response to his GR 33 request.

2. Did the Superior Court err in ordering a stay of the proceedings pending the report of the litigation guardian?

"'[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *King v. Olympic Pipeline Co.*, 104 Wn.App. 338, 350, 16 P.3d 45 (2000) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936)).

A trial court's determination on a motion to stay proceedings is discretionary, and is reviewed only for abuse of discretion. *King*, 104 Wn.App at 348 (citing *State v. Music*, 79 Wn.2d 699, 716, 489 P.2d 159 (1971)). Abuse of discretion occurs when the trial court's decision rests on untenable grounds or untenable reasons. *In re Estate of Peterson*, 102 Wn.App at 462.

In the present case, the Order Staying Proceedings was entered after the appointment of the litigation guardian as discussed *supra*, and the trial court proceedings were stayed pending the completion of the report of the litigation guardian. CP 990-91. The order further provided that a pending

motion by Mr. Erickson regarding his ER 904 submittal was stricken from the docket. CP 991.

The order appointing the litigation guardian directed the appointee to investigate whether any of Mr. Erickson's claims had merit, and whether his lawsuit should proceed. CP 447. Given the number of parties and the range of claims made by Mr. Erickson in his Complaint, the amount of time and the expense involved in each defendant's participation in the lawsuit would be staggeringly high. During the pendency of the appointment of and investigation by the litigation guardian, the defendants would have been required to appear and argue against Mr. Erickson's aforementioned ER 904 motion, and may have been required to answer his Complaint, brief and argue dispositive motions, and respond to any discovery demands Mr. Erickson may have made. Many, if not all, of those costs would have been wasted had the stay on the proceedings not been imposed pending the litigation guardian's investigation and report.

Mr. Erickson has failed to demonstrate that the trial court's decision to order the stay of proceedings was based upon untenable grounds or untenable reasons.

3. Did the Superior Court err in ordering the dismissal of certain of Mr. Erickson's claims in accordance with the recommendations of the litigation guardian?

The Superior Court ordered the appointment of a litigation guardian with the specific instructions "to review the pleadings in this matter and conduct all research necessary to make a determination whether any of Mr. Erickson's claims have merit and/or whether it is in his best interests to proceed with the lawsuit." CP 447.

The litigation guardian discharged those obligations and submitted his report to the court and parties. CP 981-85. In particular, the litigation guardian determined that Mr. Erickson's claims against certain named defendants lacked merit, and that they should not remain in the lawsuit. CP 983. Mr. Erickson stipulated to the dismissal of those defendants. CP 973.

The litigation guardian further found that, of all the claims asserted by Mr. Erickson in his Complaint, only his claims to a reversionary right to property adjacent to his Property, and to the extension of the boundary lines of his Property, should be addressed by the court. CP 984.

Based upon the litigation guardian's report, and after having heard argument from all parties and the litigation guardian, the Superior Court dismissed all of Mr. Erickson's claims against the Port, NPIUSA, the City and the County except for Mr. Erickson's claims related to his boundary lines and to quieting title to his Property. CP 870. The court's order

preserved Mr. Erickson's ability to seek relief through a declaratory judgment action, and to make a claim for attorney fees related to his quiet title and boundary line causes of action. CP 870. In other words, the court's order aligned directly with the recommendations set forth in the litigation guardian's report. CP 981-85, 869-871.

In the end, the appointment of the litigation guardian had its desired effects of promoting judicial economy, releasing innocent defendants from frivolous litigation, and assisting the court and the remaining defendants in narrowing the issues to be addressed. And the trial court did exactly what its action in appointing the litigation guardian suggested it would do: it relied on the recommendations of the litigation guardian. One must ask, what ends would the appointment of the litigation guardian have served if the trial court were not permitted to do so? In a different context, the Washington Supreme Court has recognized the importance of guardians ad litem and other agents of the court in providing critical information to assist judges in making decisions: "Judges are forced to make incredibly difficult and important determinations. The judge must rely upon the information provided by others. GALs ... are invaluable to the courts. They are often the eyes and ears of the court and provide critical information ... ." *In re Dependency of MSR*, 174 Wn.2d 1, 20-21, 271 P.3d 234 (2012) (discussing

the role of guardians ad litem and CASA volunteers in child dependency cases).

Mr. Erickson may be disappointed with the result, but he has failed to demonstrate how the Superior Court erred in relying on the recommendations of the litigation guardian who was appointed to provide the court with the very recommendations the court followed.

4. Did the Superior Court err in ordering Mr. Erickson to file a more definite statement of his claims against the Port and NPIUSA?

The Port and NPIUSA filed a motion under CR 12(e) and CR 8(a) for a more definite statement from Mr. Erickson of his property line designation and quiet title claims that were preserved by the trial court. CP 862.

CR 12(e) provides as follows:

> If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

CR 8(a) provides as follows:

> A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross claim, or third party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled. Relief in the alternative or of several different types may be demanded.

The Port and NPIUSA argued that Mr. Erickson's Complaint not only is voluminous, but it is unintelligible. CP 864, 1073-1135. And even after the court narrowed the scope of the lawsuit, one could not ascertain precisely what relief Mr. Erickson was seeking as to the remaining claims, as the various causes of action set forth in the Complaint, and the parties to which they relate, are intermingled and cross-referenced throughout the Complaint in such a haphazard and confusing manner as to defy comprehension. CP 864, 1073-1135. A more definite statement by Mr. Erickson of his property line designation and quiet title claims would aid the Port and NPIUSA in framing a responsive pleading, and would further the efficient, economical disposition of the action by clarifying the issues for more focused discovery and for possible disposition without the need for expensive and time-consuming discovery and trial. CP 864-65.

The trial court found that Mr. Erickson's Complaint is so voluminous and confusing as to be unintelligible, and that a more definite statement as to his property line designation and quiet title claims against

the Port and NPIUSA was necessary. CP 658-59. In so finding, the court ordered Mr. Erickson to make a more definite statement of his claims against the Port and NPIUSA as to those causes of action, and to clearly identify the real property at issue, the boundary lines to be adjusted, the scope and extent of such boundary line adjustments, the title issues to be quieted, and the legal theories on which Mr. Erickson was relying in support of his claims. Additionally, the court directed Mr. Erickson not to restate the factual background as set forth in his Complaint, except to the extent necessary to fulfill the other requirements in the order, and not to allege any new causes of action against any defendant in the lawsuit. CP 659.

The law is well established that it is within the discretion of the trial court to grant a motion for a more definite statement. *Seattle & W.W.R. Co. v. Ah Kowe*, 2 Wash.Terr. 36, 40, 3 P. 188 (1880); *State v. Knowles*, 79 Wn.2d 835, 841, 490 P.2d 113 (1971). Abuse of discretion occurs when the trial court's decision rests on untenable grounds or untenable reasons. *In re Estate of Peterson*, 102 Wn.App. at 462.

Mr. Erickson filed a More Definite Statement covering 16 pages (CP 482-97), accompanied by a supporting affidavit covering 38 pages (CP 498-535), and in those 54 pages he had ample opportunity to plead his remaining claims. Mr. Erickson fails to demonstrate how the trial court erred in

requiring him to provide a more definite statement of his causes of action against the Port and NPIUSA.

5. Did the Superior Court err in granting summary judgment in favor of the Port and NPIUSA?

After Mr. Erickson filed his More Definite Statement, the Port and NPIUSA moved for summary judgment dismissal of Mr. Erickson's property line designation and quiet title claims that were preserved by the trial court in its Order Dismissing Claims and Lifting Stay. CP 371-84. In finding no material facts in issue (VRP (9/23/2016) at 53) and no legal basis for Mr. Erickson's claims (VRP (9/23/2016) at 54), the trial court dismissed Mr. Erickson's remaining claims with prejudice. CP 193-95.

A grant of summary judgment is reviewed de novo. *Westberry v. Interstate Distributor Co.*, 164 Wn.App. 196, 204, 263 P.3d 1251 (2011). A motion for summary judgment may be granted only if from all the evidence reasonable persons could reach but one conclusion, i.e., that the moving party is entitled to judgment as a matter of law. *Kennedy v. Sea-Land Service, Inc.*, 62 Wn.App. 839, 855-56, 816 P.2d 75 (1991). The trial court must consider the facts in a light most favorable to the nonmoving party. *Id.* at 855. If the moving party satisfies its burden, the nonmoving party must present evidence that demonstrates that material facts are in dispute. If the nonmoving party fails to do so, then summary judgment is

proper. *Atherton Condominium Apartment-Owners Assoc. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). If there is a genuine issue of material fact, a trial is necessary. It is the trial court's function to determine whether such a genuine issue exists. *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975). To demonstrate the existence of a material fact or a triable issue, the nonmoving party must present facts which would be admissible in evidence at trial and which are not ultimate facts or conclusions. *Burmeister v. State Farm Insurance Co.*, 92 Wn.App. 359, 365, 966 P.2d 921 (1998). A "material fact" in the context of summary judgment is one upon which "the outcome of the litigation depends in whole or in part." *Zobrist v. Culp*, 18 Wn.App. 622, 636, 570 P.2d 147 (1977).

Mr. Erickson's More Definite Statement includes under the caption "Quiet Titles" issues described as "Potential Property Issue with The Port" and "Quiet Title to The Property." CP 484-87. Mr. Erickson's claim appears to be aimed at quieting title to the Property he acquired by Treasurer's Tax Deed recorded December 10, 1997. CP 365-66.

Neither the Port nor NPIUSA disputes that Mr. Erickson is the owner of the Property. Yet Mr. Erickson's claim seems to be that a short plat map created at the Port's request did not identify the Property and thereby evidences the Port's claim to an interest in the Property. CP 375. The omission of a landowner's property in a survey map is not an element

of adverse possession or in any other way an indication of a third party's claim of ownership in that property[10]. Moreover, Mr. Erickson has not presented any evidence that the Port has ever claimed any interest in the Property.

Quiet title actions are governed by Chapter 7.28 RCW. The relevant statute provides, in pertinent part, as follows:

> Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought **against the tenant in possession**; if there is no such tenant, then **against the person claiming the title** or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title ... .

RCW 7.28.010 (emphasis added).

By the plain language of the statute, a quiet title action is limited to parties who actually claim an interest in the subject property. In the present case, neither the Port nor NPIUSA has claimed an interest in the Property. Therefore, there is no live controversy between Mr. Erickson and either the Port or NPIUSA regarding Mr. Erickson's interest in the Property, and the trial court's dismissal, with prejudice, of Mr. Erickson's action to quiet title to the Property as against the Port, and, as applicable, NPIUSA, was

[10] To prove adverse possession, the claimant must prove that he possessed the disputed area in a manner that was (1) exclusive, (2) open and notorious, (3) hostile, and (4) actual and uninterrupted for the statutory period of ten years. *Teel v. Stading*, 155 Wn.App. 390, 393–94, 228 P.3d 1293 (2010).

appropriate. *Pentagram Corp. v. City of Seattle*, 28 Wn.App. 219, 223, 622 P.2d 892 (1981) (a case is considered moot if there is no longer a controversy between the parties, if the question is merely academic, or if a substantial question no longer exists).

In his More Definite Statement, Mr. Erickson also identifies an issue under the caption "Reversion Rights to Marine Drive within Nippon Boundary Line Survey" that apparently relates to the western boundary of the Property. CP 487-88. Mr. Erickson characterizes it as a "quiet title action" that "is dependent upon other issues proving plaintiff's reversion rights to Marine Drive." CP 487.

In connection with this claim, Mr. Erickson requested that NPIUSA be required to file a correction to a 1988 boundary survey that allegedly relates to property owned by NPIUSA, apparently in furtherance of his claims to reversionary interests in certain property beyond the boundaries of his Property. CP 487. Mr. Erickson has no legal standing or basis at law to challenge the boundary survey prepared at the request of a third party or to require NPIUSA to take any action whatsoever regarding the survey. Moreover, the Order for More Definite Statement directed Mr. Erickson to "make a more definite statement of his claims against the Port and [NPIUSA] as to the Property Line Designation and Quiet Title causes of action in his Second Amended Complaint." CP 658-59. This claim is not

in the nature of quiet title or designation of boundary lines to the Property. Accordingly, it was appropriate for the trial court to dismiss, with prejudice, Mr. Erickson's claim that NPIUSA is required to file a correction to an earlier boundary survey.

In his More Definite Statement, Mr. Erickson identifies another issue under the caption "One-half of 'K' Street (Vacated 1989) Goes to Adjoining SDC Lands within 'K' St." CP 488-89. The Port and NPIUSA acquired interests in a portion of "K" Street by operation of City of Port Angeles Ordinance Number 2527, dated April 4, 1989 (the "Ordinance"), and by Quit Claim Deeds recorded May 30, 1989, under Clallam County Auditor File Numbers 617361 and 617362 (the "Quit Claim Deeds"). CP 367-70. Mr. Erickson concedes as much in his More Definite Statement: "[NPIUSA] and the Port acquired rights in 'K' Street by quit claim deed." CP 488.

The Ordinance was enacted prior to Mr. Erickson's acquisition of the Property by Treasurer's Tax Deed. CP 365-66. Nevertheless, Mr. Erickson appears to be claiming an interest in all or part of those portions of vacated "K" Street deeded to the Port and NPIUSA. Mr. Erickson claims he owns the *entire* vacated portion of "K" Street based upon the "manifest objective" of a 1913 railroad "dedication deed" by operation of an alleged reversionary clause in the dedication deed. CP 488. In the alternative, Mr.

Erickson claims he owns a *portion* of vacated "K" Street "as fee owner when [the City of Port Angeles] failed to use [the] road for road purposes (1989) and such reverted." CP 488. Mr. Erickson makes this claim despite the fact that he was not the fee owner of the Property when the City vacated that portion of "K" Street in which he claims an interest. CP 365, 367-68.

Assuming, without conceding, that the Property at one time carried with it a reversionary right to additional property around it, that reversionary right did not pass to Mr. Erickson when he acquired the Property by Treasurer's Tax Deed. "A tax deed extends only to the real property over which the court in the foreclosure proceeding has obtained jurisdiction." *Carlson v. Stair*, 3 Wn.App. 27, 30, 472 P.2d 598 (1970). The Superior Court, in authorizing the tax foreclosure of the Property, had jurisdiction only over the Property as legally described, and not over any adjoining parcels in which the then-owner may have had any reversionary or other interest.

Additionally, "the judgment of foreclosure is the source of a new and independent title, superior to all prior titles. It makes a straight line between the old and the new titles, destroying the validity of the old title as a title and forever barring any enforcement of that title as a valid subsisting title." *Bassett v. City of Spokane*, 98 Wn. 654, 656, 168 P. 478 (1917). Accordingly, a "tax title when valid is a new title ... ." *Berry v. Pond*, 33

Wn.2d 560, 565, 206 P.2d 506 (1949). Therefore, any interest, reversionary or otherwise, that Mr. Erickson's predecessor-in-interest may have had to property outside of the described boundaries of the Property was extinguished when the judgment of foreclosure was entered against the Property, and Mr. Erickson's only legal interest is in the Property itself as the Property is described in the Treasurer's Tax Deed that Mr. Erickson received. *Rushton v. Borden,* 29 Wn.2d 831, 839, 190 P.2d 101 (1948) (a tax foreclosure wipes out any rights acquired by adverse possession).

Mr. Erickson has no legal interest in any portion of "K" Street, and the trial court was correct in dismissing, with prejudice, any such claim by Mr. Erickson to that effect.

Mr. Erickson's More Definite Statement includes an additional claim under the caption "Reversion Rights to All of Marine Drive," that his southern and westerly boundary lines should be expanded to include a substantial portion of Marine Drive. CP 489-91. The Superior Court had previously dismissed with prejudice all of Mr. Erickson's claims to any reversion rights to Marine Drive arising out of his ownership of the Property. CP 459. Mr. Erickson nevertheless included in his More Definite Statement this claim for the expansion of the southern and westerly boundaries of his Property. It was proper for the court to dismiss, with

prejudice, Mr. Erickson's claims to reversion rights to Marine Drive, solely on the basis of the court's prior order (CP 455-59).

But regardless of the underlying theory upon which Mr. Erickson asserts an interest in Marine Drive, whether as a reversionary interest or otherwise, the trial court was correct in dismissing his claim involving the expansion of his southern and westerly boundary lines. First, Mr. Erickson's claim as set forth in his More Definite Statement is utterly incomprehensible. He demands an expansion of his boundary lines to include a portion of Marine Drive, then "requests" that the "property line expansion show a city road use thereon," then postulates that the City's use of the road "is potentially adverse possession." He then states that NPIUSA either does own or may own a reversion right to Marine Drive, and that the Port does not own such a reversion right. CP 489-91. Mr. Erickson's statement of this claim is indecipherable and the Port and NPIUSA cannot possibly frame a responsive pleading to it. Mr. Erickson therefore has failed to provide a sufficiently definite statement as ordered by the trial court in its Order for More Definite Statement (CP 658-60), and it was appropriate for the court to dismiss this claim with prejudice as authorized under CR 12(e).

Additionally, to the extent this claim relates to any reversionary rights NPIUSA may have to Marine Drive, Mr. Erickson has no legal

standing to make such a claim, and dismissal with prejudice is appropriate as to NPIUSA.

Furthermore, the Port has never claimed a reversionary right to Marine Drive and Mr. Erickson has no cause of action against the Port concerning Marine Drive.

Based upon the foregoing, the trial court was correct in dismissing, with prejudice, Mr. Erickson's claim to a reversionary right to any portion of Marine Drive arising out of his ownership interest in the Property.

Mr. Erickson's More Definite Statement includes multiple claims under the caption "Reversion Rights to SDC Lands, Third Street North, Within 'K' Street." CP 491-97. As with Mr. Erickson's incomprehensible claim regarding Marine Drive, his claims to Sampson Donation Claim lands, Third Street North and "K" Street are impossible to ascertain and the Port and NPIUSA cannot possibly frame responsive pleadings to them. Mr. Erickson therefore failed to provide a sufficiently definite statement as ordered by the trial court, and dismissal of the claims, with prejudice, was proper.

Indeed, Mr. Erickson concedes in his More Definite Statement that, as to some aspects of his theory, "[t]his is too confusing for plaintiff." CP 494. And as to another aspect of his theory, Mr. Erickson acknowledges "[t]his will take further investigation as to the doctrine of eminent domain

by the State, or other theory not yet known to plaintiff." CP 494. Regarding Third Street, Mr. Erickson states, "This is tricky. It is debatable who is entitled to what portion of Third Street North within 'K' Street. It is much simpler for court [sic] to affirm Third Street not vacated and let [t]he City hear the debate when vacation of Third Street North is [properly] presented to [t]he City. Believe me." CP 491.

Not only are Mr. Erickson's claims to property interests in the Sampson Donation Claim, Third Street North, and "K" Street incomprehensible, they are so ill-formed, convoluted and legally dubious as to defy even Mr. Erickson's best effort to understand and articulate them. The Port and NPIUSA cannot possibly be expected to formulate a responsive pleading to these claims, and, as Mr. Erickson has demonstrated that he cannot provide a sufficiently definite statement on these claims as ordered by the trial court, the dismissal of those claims, with prejudice, was proper and in accordance with CR 12(e).

6. Did the Superior Court err in denying Mr. Erickson's motion for reconsideration of its order granting summary judgment in favor of the Port and NPIUSA?

Following entry of the order granting summary judgment dismissal in favor of the Port and NPIUSA, Mr. Erickson filed a motion for reconsideration of the trial court's summary judgment in favor of the Port

and NPIUSA. CP 177-91. The motion was accompanied by Mr. Erickson's supporting affidavit. CP 96-176. The trial court denied Mr. Erickson's motion without seeking responsive briefing from any defendants. CP 95. Mr. Erickson offers no citations to authority explaining why the trial court erred in denying his motion for reconsideration. Assignments of error that are not supported by citations to authority will not be reviewed on appeal. *DeHeer*, 60 Wn.2d at 126. Moreover, the grant or denial of a motion for reconsideration is within the sound discretion of the trial court and will be overturned only upon an abuse of discretion. *Bringle v. Lloyd*, 13 Wn.App. 844, 848, 537 P.2d 1060 (1975).

Mr. Erickson fails to demonstrate how the trial court erred in denying his motion for reconsideration of the court's summary judgment in favor of the Port and NPIUSA.

7. Should the Court of Appeals award attorney fees and expenses to the Port and NPIUSA?

The Court of Appeals has the authority to award attorney fees and expenses for a frivolous appeal. RAP 18.1(a) provides in pertinent part: "If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule…."

RAP 18.9(a) provides in pertinent part: "The appellate court on its own initiative or on motion of a party may order a party or counsel … who … files a frivolous appeal … to pay terms or compensatory damages to any other party who has been harmed … by the failure to comply or to pay sanctions to the court." In addition, RCW 4.84.185 provides in pertinent part: "In any civil action, the court having jurisdiction may, upon written findings by the judge that the action …was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action …." *See also* RCW 4.84.250 and 4.84.290 (authorizing an award of attorney fees to the prevailing party on appeal in an action for damages of $10,000 or less).

"An appeal is frivolous if there are no debatable issues on which reasonable minds can differ and [it] is so totally devoid of merit that there was no reasonable possibility of reversal." *Dave Johnson, Inc. v. Wright,* 167 Wn.App. 758, 787, 275 P.3d 339, *rev. denied,* 175 Wn.2d 1008 (2012). The Court of Appeals has awarded attorney fees for frivolous appeals. *E.g., In re Estate of Muller,* 197 Wn.App. 477, 490, 389 P.3d 604 (2016); *West v. Thurston County,* 169 Wn.App. 862, 867-68, 282 P.3d 1150 (2012), *rev. denied,* 176 Wn.2d 1012 (2013).

While recognizing that Mr. Erickson suffers from a disability and recognizing his right to access the courts, the Port and NPIUSA have been subjected to years of meritless litigation. To date, they have borne those costs without seeking reimbursement. The Port and NPIUSA now seek recovery of reasonable attorney fees on appeal to offset their costs and deter further litigation by Mr. Erickson. The Port and NPIUSA respectfully request that the Court of Appeals award them reasonable attorney fees for responding to this frivolous appeal.

IV. CONCLUSION

Mr. Erickson's Notice of Appeal (CP 16-18) designates for review the following Superior Court decisions that relate to the Port and NPIUSA:

1. Order Following in Camera Review of Plaintiff's GR 33 Request for Accommodation (CP 19, 447, 565, 796, 888);
2. Order Staying Proceedings (CP 990);
3. Order Dismissing Claims and Lifting Stay (CP 869);
4. Order for More Definite Statement (CP 658);
5. Order re: Plaintiff's GR 33 Accommodation Request (CP 207);
6. Order Granting Summary Judgment (CP 193); and
7. Order Denying Plaintiff's Motion to Reconsider (CP 95).

With the exception of the Order Granting Summary Judgment to the Port and NPIUSA (CP 193), each decision of the trial court was left to the sound discretion of the court. In those instances, Mr. Erickson has failed to demonstrate any abuse of that discretion. Those decisions, therefore, should not be disturbed on appeal.

As for the Order Granting Summary Judgment, Mr. Erickson has failed to demonstrate the existence of a genuine issue of material fact as to any of his claims, and he has failed to present any competent legal authority in support of any of his claims or otherwise shown that the trial court erred in granting summary judgment in favor of the Port and NPIUSA. Accordingly, the trial court's Order Granting Summary Judgment should not be disturbed on appeal.

As there are no debatable issues in this matter on which reasonable minds can differ, and as Mr. Erickson's appeal is so totally devoid of merit that there is no reasonable possibility of reversal, the Port and NPIUSA should be awarded their reasonable attorney fees and costs incurred in responding to Mr. Erickson's appeal.

//

//

//

//

DATED this 29th day of September, 2017.

FIDELITY NATIONAL LAW GROUP

By: _/s/Janis G. White_____
Janis G. White, WSBA #29158
Of Attorneys for Nippon Paper Industries, USA

701 5th Ave., Ste. 2710
Seattle, WA 98104-7054
206/223-4525

PLATT IRWIN LAW FIRM

By: _/s/Simon Barnhart_____
Simon Barnhart, WSBA #34207
Of Attorneys for Port of Port Angeles

403 South Peabody St.
Port Angeles, WA 98362
360/457-3327

CERTIFICATE OF SERVICE

On the date given below I caused to be served **RESPONSE TO APPELLANT'S OPENING BRIEF** and an electronic copy on the following individuals in the manner indicated:

Via email to:
Adam Rosenberg
Williams Kastner & Gibbs PLLC
6021 Union Street, Suite 4100
Seattle, WA 98101
arosenberg@williamskastner.com

Via email to:
Simon Barnhart
Platt Irwin Law Firm
403 S Peabody Street
Port Angels, WA 98362
sbarnhart@plattirwin.com

Via email to:
Lawrence Eliot Freedman
Attorney at Law
325 E Washington Street #214
Sequim, WA 98382
larryf@olypen.com

Via email and FedEx to:
Ronald Erickson
934 W Lauridsen Blvd, #209
Port Angeles, WA 98363
rrrightofway@gmail.com

Dated: September 29, 2017

/s/Sasannah Dolan-Williams
Sasannah Dolan-Williams
Litigation Paralegal

FIDELITY NATIONAL LAW GROUP

September 29, 2017 - 1:03 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	49951-7
Appellate Court Case Title:	Ronald W. Erickson, Appellant v. The Port of Port Angeles, et al, Respondents
Superior Court Case Number:	14-2-00407-1

The following documents have been uploaded:

- 7-499517_Briefs_20170929122842D2091927_9975.pdf
  This File Contains:
  Briefs - Respondents Reply
  The Original File Name was Response to Appellants Opening Brief.pdf

A copy of the uploaded files will be sent to:

- arosenberg@williamskastner.com
- bwendt@co.clallam.wa.us
- jhager@williamskastner.com
- larryf@olypen.com
- rrrightofway@gmail.com
- sbarnhart@plattirwin.com

Comments:

Sender Name: Sasannah Dolan-Williams - Email: sasannah.dolan-williams@fnf.com
Filing on Behalf of: Janis G White - Email: janis.white@fnf.com (Alternate Email: janis.white@fnf.com)

Address:
701 5th Ave, Suite 2710
Seattle, WA, 98104
Phone: (206) 224-6000

Note: The Filing Id is 20170929122842D2091927